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Governor's Commission on the Status of Women.

WOMEN IN MASSACHUSETTS: A LEGAL HISTORY

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Massachusetts

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INTRODUCTION

Law has always been the central symbol of equality for Americans. Our legal system stands as the path that guarantees the freedoms and equality written into our Constitution. But many people forget that law comes from the minds of human beings themselves, designed to meet the needs of a certain place and time, and does not deserve the label of "absolute truth." Because it does reflect human efforts to order society, law also shows how a society chooses to balance custom with ideals, the past with the future.

Perhaps the ultimate importance of law in society rests in its power to institutionalize behavior. It defines how people think and feel about the experiences in their lives. It is the same quality of law that makes it so powerful in our lives that often prevents it from responding to social change. This problem has become particularly clear in the past fifteen years when the pace of change has moved more quickly than ever before. One of the most dramatic of these changes concerns the status of women in society. In the past decade we have witnessed women gaining the chance to be equal human beings first and foremost, not members of an inferior sex.

The law has been slow to adapt to these changes. The mandate of the Governor's Commission on the Status of Women requires that it survey and evaluate the laws of the state for their adequacy in regard to women and recommend changes to the Governor when necessary. With this booklet, the Commission seeks to fulfill its mandate by educating the citizens of the state on the important legal issues and necessary reforms of the laws affecting women. Through our efforts we hope to aid women in recognizing their legal rights and moving towards legal equality.

This brief history of women and the law explains how law and society have changed over the past 200 years to bring women to the position they hold in relation to law today. Only by understanding this past, with its share of promise and injustice, can we continue to shape our law to allow Americans to meet the challenges of the future.

I. Common Law Doctrine

Massachusetts is a common law state, one of 42 such states in the nation. This means that our system of law came from England where it was formed by judge's decisions in keeping with social custom.

In the beginning years of our nation, women were defined only by their relationships with men: they were daughters until they became wives. No one regarded them as adult people. Legally, the status of married women equalled that of babies, idiots, and serfs.

When a woman married, her husband gained absolute control over her possessions—land, houses, personal property, and household goods. Even in the rare cases where a woman could earn a wage, this too belonged to her husband. A wife could not sign a contract, sue or be sued, or make a will without her husband's permission. Finally, she was not entitled to the custody of her own children.

These common law principles followed the early settlers to America to form the basis of American law. They continue to define the position of women in American society some six centuries after they were first used. It was not until the mid-19th century that women began to unite for the social and legal equality denied to them by these common law ideas of inferiority and non-existence.

II. Nineteenth Century and the Women's Movement

The anti-slavery movement of the 1830's and the 1840's gave women their first introduction to the political world. Women fought actively to oppose slavery from the movement's beginning, but when the anti-slavery society was founded officially in 1831, it permitted no female members. Undaunted by this act of discrimination, women continued to speak out by starting their own Female Anti-slavery Society under the leadership of Lucretia Mott and the Grimke sisters.

Never before this had women dared to speak in public. Their bold actions subjected them to vicious attacks from the press and pulpit and jeering mobs. However, their courage in supporting the anti-slavery cause failed to get them voting rights or recognition at the 1840 world-wide anti-slavery convention in London. The unfairness of being forced to sit behind a curtain in the balcony at the convention, for a cause women had risked their lives for, moved some women into action.

Elizabeth Cady Stanton and Lucretia Mott were two women who attended the convention but were denied the right to participate. Yet their activity in the anti-slavery movement had taught them how to organize in politics; eight years later they joined forces to plan their own convention—this time for women. They wrote a platform called the Declaration of Sentiments, based on the Declaration of Independence, outlining equal rights for women. Stanton insisted on including a statement asking that women be granted the right to vote. This move was considered so radical that her husband left town rather than suffer the embarrassment of public reaction to it.

Seneca Falls 1848

Women from miles around appeared at Stanton and Mott's convention in Seneca Falls. They passed all the articles of the Declaration of Sentiments unanimously—except the suffrage article. After long debate, it passed by narrow margin. Women had begun their long march towards political equality. Three years later Elizabeth Cady Stanton met Susan B. Anthony, forming a team that would lead the women's rights movement for the rest of the century. But of all the women who went to Seneca Falls in 1848, only one—Charlotte Woodward—lived to cast her vote in the 1920 election.

Civil War: The Negro's Hour

The outbreak of the Civil War halted the progress of the women's movement. This was because active women focused their energy on collecting one million signatures on an anti-slavery petition for Congress. When the war ended, the question of voting rights for Negroes was the foremost political issue. Women, who had fought so hard to abolish slavery and to preserve the Union, believed that their efforts would also bring them the right to vote.

They were wrong. Instead, they were told it was the "Negro's Hour." People who were fighting for the passage of the 14th Amendment to the Constitution—the law giving Negroes the right to vote—feared it would not pass if it also let women vote. Anthony and Stanton knew that if the Amendment left out female suffrage, women would have to work out their own Amendment. They were right.

Women faced enormous disadvantages in their daily lives besides lacking the vote. This was a time when husbands could beat their wives to discipline them; the only legal restriction limited the size of the stick used. Not until the end of the 19th century did married women win the right to own property, make contracts, or keep their wages. A few courageous women continued to work non-stop to better the status of women. Slowly and with great costs to their personal lives, some victories were won.

But when our country celebrated its 100 year birthday at a celebration in Philadelphia, 1876, women could not be official guests. But five brave women staged their own brief protest, presenting a women's rights petition to the Chairman of the celebration. Elizabeth Cady Stanton later wrote:

> "...Their work was not for themselves alone, not for the present generation, but for all women of all time. The hopes of posterity were in their hands and they determined to place on record for the daughters of 1976, the fact that their mothers of 1876 had asserted their equality of rights, and impeached the government of that day for its injustices toward women."

Twentieth Century and the 19th Amendment

Women would not create an uproar to the nation like the one they had in 1876 until 1910. Then, Elizabeth Stanton's daughter, Harriet Stanton Blatch, organized the first great suffrage parade. This march brought together all classes of women: factory workers, professors, housewives, and secretaries, in a common cause. In 1913, the day before Woodrow Wilson's inauguration, Alice Paul and Lucy Burns, organized another suffrage parade. Men and boys sneered and cursed at the marching women, throwing rotten fruit and vegetables at them, and forcing them to march one by one down the avenue.

The violence of the 1913 march seemed to bring new life into the movement. In 1914 Nevada and Montana granted women the vote. The movement gained an outstanding leader in Carrie Chapman Catt. The entrance of the United States into World War I gave women another chance to show their strengths and right to equality.

The war also provided women with a new tactic in their struggle. If the war was being fought "to make the world safe for democracy," there was no reason to limit democracy to half of America. By January 1917 women were picketing the White House. They refused to act violently, but rather stood silently and firmly where the President would have to see them whenever he arrived or left the White House. War fever made any protestors seem un-American and soon people opposed the demonstrating women. By the end of the summer, 218 women from 26 states had been arrested, 96 women jailed, including leaders Alice Paul and Lucy Burns. But even jail did not stop women, for as soon as one was arrested, she

would have a new picketer take her place, to return as soon as she was released from jail.

By the end of the war opinion in the press began to favor the women's cause. This support, paired with the brilliant organization of Carrie Chapman Catt, helped the Women's Suffrage Amendment to pass when it came up for a vote in 1918. Forty years after Susan B. Anthony filed this amendment, the House passed it with exactly two thirds vote.

Final passage by the Senate and ratification by the states took longer and was a harder struggle than anyone dreamed. The Senate did not pass it until June of 1919 and on August 18, 1920, when Tennessee ratified, the 19th Amendment became part of the Constitution. On that day 26 million women received the vote. People thought the world would change. It didn't.

III. Legal History of the Struggle for Equality

The most powerful tool we now have to gain women equality under the law is the 14th Amendment. While its original purpose was to guarantee Negroes their civil rights, the important phrase in the amendment—that "...no state shall deny to any person within its jurisdiction the equal protection of the laws," has been more recently extended to women. This law can only control what the state—not private persons—can do, but it has worked to eliminate almost all racial discrimination in law.

But its success in granting women legal equality is yet to be proven. Judges who enforce the law have refused to apply it as strictly in cases of sex discrimination as they have in cases of race discrimination. The Supreme Court in 1971 had the chance to set a national judicial standard that would have gone far to make sex discrimination as illegal as race discrimination. But they refused to use this stand in their decision, and all their decisions on sex discrimination since 1971 have not been consistent

III.Cont.

This situation has led many lawyers and citizens to become unsure and cynical that the 14th Amendment will ever bring women equality under the law. The alternative method—case by case—is slow and expensive, usually requiring decades to achieve meaningful law reform. Many people argue that the Equal Rights Amendment (ERA), first filed by feminists in 1923 when they prophetically realized that the vote would not mean equality, is the only way that men and women can get "equal justice under the law" in our lifetime.

Federal Legislation

In the past decade and a half many pieces of legislation have been passed to give women greater rights. Two of the most important of these laws are the Equal Pay Act (1963) and Title VII of the Civil Rights Act of 1964. The Equal Pay Act attempts to legislate a very simple idea: men and women who do the same job under similar conditions should get the same pay. For example, a female maid should get the same pay as a male janitor if they do the same work.

The second law is the Civil Rights Act of 1964, particularly a subsection of the law numbered Title VII. This law protects women only by legislative accident, when a Southern Congressman introduced the word "sex" into the subsection of the law as a joke in hopes that it would defeat the entire law. But the law passed and it has proved to be the major weapon in women's fight for equal employment opportunity. Title VII prohibits discrimination in most employment situations.

The idea of equal opportunity in employment for women was extended to education in another bill—the Higher Education Acts of 1972. Several other bills also attempt to give women equality in credit. But the experience of women has shown again and again that these separate peices of legislation have failed to bring women equality. While there have been many individual legal pieces of progress, some equalling big steps forward, when they are all viewed and enacted together they do not guarantee equality.

This situation can be compared to using an umbrella with a hole in it during a rainstorm. If the umbrella is positioned exactly right, it might protect you from the rain; but if it is leaned just slightly to one side, it won't. Many judges and states have failed to put these pieces of legislation together in the one way that they could legally protect women. Women suffer inequality under the law because of it.

Massachusetts Law — Sex Discrimination

Massachusetts has joined the battle to give women legal equality, amending its laws over the past five years to include sex discrimination as an illegal action. Women's rights are protected in the areas of employment, housing, accommodations, credit, and public education. The agency charged with enforcing these laws is the Massachusetts Commission Against Discrimination (MCAD). A victim of inadequate funds with many responsibilities, the MCAD has a huge backlog of cases. In response to the crisis at MCAD, legislation was passed in 1975 allowing any person who felt they were illegally discriminated against to take their case directly to court. However, the problem of enforcement of discrimination laws remains as serious as ever.

The second part of the picture of the impact of anti-discrimination laws in Massachusetts are regulations. Laws are purposely written in broad and general terms; agencies are supposed to write regulations to specifically detail what the law does or does not do. In the same way that the game of baseball is much more than three outs, three strikes, and four balls, laws depend on regulations to make them worth something. Regulations may be written so that they actually weaken the law or take so long in formulation that years pass before the law takes effect. This is a major cause of legal injustice.

IV. Conclusion

Women have improved their legal status dramatically since the days they were treated the same as babies, idiots, or slaves. This road to equality has been long, and women still—as this booklet shows—have not reached the end. History and daily experience show that neither laws, nor regulations, nor the equal protection clause of the 14th Amendment have brought women to the point of equality under the law.

The question of how we will reach this goal still remains open. A highly visible answer that many people believe in today is the passage of the Equal Rights Amendment, both on the state and federal levels. The Governor's Commission on the Status of Women officially endorses the ERA, an amendment first filed in 1923, as a law whose time is long overdue.

People once thought the vote was the most radical right that a woman could gain and that once she could vote, her equality was guaranteed. But history has shown that this has not become reality. Nothing short of major changes in social attitudes toward women and legal equality in other areas of life will be needed before women stand equal to men in American society.

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